

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

DAWN M. DAY,

Plaintiff,

vs.

Case No. 06-C-0188 C

CITY OF BARABOO,
POLICE CHIEF DENNIS KLUGE,
BARABOO BOARD OF POLICE
AND FIRE COMMISSIONERS,
PRESIDENT DIANA ZICK,
COMMISSIONER J. HENRY RATHJEN,
COMMISSIONER MARY DEPPE, and
COMMISSIONER ROBERT MADALON,

Defendants.

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

NOW COME the defendants, City of Baraboo, Police Chief Dennis Kluge, Baraboo Board of Police and Fire Commissioners, President Diana Zick, Commissioner Dale Floody, Commissioner J. Henry Rathjen, Commissioner Mary Deppe and Commissioner Robert Madalon, by their attorneys, Gunta & Reak, S.C., answer the plaintiff's complaint as follows:

NATURE OF THE ACTION

Deny.

JURISDICTION AND VENUE

Deny.

PARTIES

1. Admit.
2. Deny that B.P.D. is a municipal employer, allege that Baraboo is a municipal employer.

3. Admit.

4. Admit that the Baraboo PFC has the authority to approve or disapprove of recommendations regarding promotions.

5. Admit.

6. Admit.

7. Admit.

8. Admit.

9. Admit, but allege that he was not on the PFC during the times relevant to this lawsuit.

STATEMENT OF CLAIMS

10. Admit.

11. Admit.

12. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 12, and, therefore, deny the same. Allege that Day applied on December 13, 2004.

13. Admit.

14. Admit.

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 19, and, therefore, deny the same.

20. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 20, and, therefore, deny the same.

21. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 21, and, therefore, deny the same.

22. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 22, and, therefore, deny the same.

23. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 23, and, therefore, deny the same.

24. Admit.

25. Admit.

26. Lack knowledge and information sufficient to form a belief as to the truth or falsity of Paragraph 26, and, therefore, deny the same.

27. Admit.

28. Deny.

29. Defendants reallege and incorporate paragraphs 1 through 28 of this Answer.

30. Deny.

31. Deny.

32. Deny.

33. Defendants reallege and incorporate paragraphs 1 through 32 of this Answer.

34. Deny.

35. Deny.

36. Deny.

AFFIRMATIVE DEFENSES

1. Plaintiff's complaint fails to state a claim upon which relief can be granted.

2. Defendants are entitled to qualified immunity.

3. Defendants' conduct was privileged.
4. Defendants' actions were intended to promote effective and efficient public service and outweighed any interests plaintiff may have had in being promoted.
5. Plaintiff's injuries, if any, were the result of her own conduct.
6. On information and belief, plaintiff may have failed to mitigate her damages.
7. On information and belief, the Baraboo Board of Police and Fire Commissioners is not a suable entity.
8. Plaintiff's work history and experience indicated she was not capable of effectively performing the duties of Sergeant.
9. The individual members of the Baraboo Police and Fire Commission are entitled to quasi-judicial or legislative act immunity.

Dated at Milwaukee, Wisconsin, this 5th day of May, 2006.

/s/ Kevin P. Reak

Gregg J. Gunta

Wisconsin State Bar Number: 1004322

E-Mail Address: gjg@gunta-reak.com

Kevin P. Reak

Wisconsin State Bar Number: 1004316

E-Mail Address: kpr@gunta-reak.com

John A. Wolfgang

Wisconsin State Bar Number: 1045325

E-Mail Address: jaw@gunta-reak.com

Attorneys for Defendants

GUNTA & REAK, S.C.

219 North Milwaukee Street, Fifth Floor

Milwaukee, Wisconsin 53202

Telephone: (414) 291-7979

Facsimile: (414) 291-7960